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**Attorneys for The Dugaboy Investment Trust**

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE NORTHERN DISTRICT OF TEXAS  
 DALLAS DIVISION**

|  |  |   |
|--|--|---|
| <b>In re:</b><br><br><b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b><br><br><b>Debtor.</b>  | §<br>§<br>§<br>§<br>§                          | <b>Case No. 19-34054</b><br><br><b>Chapter 11</b> |
|  |  |   |
| <b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b><br><br><b>Plaintiff.</b><br><br><b>v.</b><br><br><b>JAMES D. DONDERO, NANCY DONDERO, AND</b><br><b>THE DUGABOY INVESTMENT TRUST,</b><br><br><b>Defendants.</b>                                 | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | <b>Adversary No. 21-03003-sgj</b>                 |
|  |  |   |
| <b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b><br><br><b>Plaintiff.</b><br><br><b>v.</b><br><br><b>NEXPOINT ADVISORS, L.P., JAMES DONDERO,</b><br><b>NANCY DONDERO, AND THE DUGABOY</b><br><b>INVESTMENT TRUST,</b><br><br><b>Defendants.</b> | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | <b>Adversary No.: 21-03005-sgj</b>                |
|  |  |   |

|   |   |                                    |
|---|---|------------------------------------|
| <b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>   | § |                                    |
| <b>Plaintiff.</b>   | § |                                    |
| <b>v.</b>   | § |                                    |
| <b>HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,</b>                    | § | <b>Adversary No.: 21-03006-sgj</b> |
| <b>Defendants.</b>  | § |                                    |
| <hr/>   |   |                                    |
| <b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>   | § |                                    |
| <b>Plaintiff.</b>   | § |                                    |
| <b>v.</b>   | § |                                    |
| <b>HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,</b> | § | <b>Adversary No.: 21-03007-sgj</b> |
| <b>Defendants.</b>  | § |                                    |
| <hr/>   |   |                                    |

### **DEFENDANTS' JOINT WITNESS AND EXHIBIT LIST**

Defendants James D. Dondero, Nancy Dondero, and The Dugaboy Investment Trust (“Defendants”) hereby file this Joint Witness and Exhibit List for the consolidated hearings to consider (i) *Defendants’ Rule 12(b)(6) Motion to Dismiss Plaintiff’s Fifth, Sixth, and Seventh Claims for Relief*; and (ii) *Motion to Compel Arbitration and Stay Litigation*<sup>1</sup>, currently set for November 9, 2021 at 1:30 p.m. In support thereof, Defendants respectfully show as follows:

<sup>1</sup> Each of these motions was concurrently filed in Adv. Nos. 21-03003, 21-03007, 21-03006, and 21-03005, Case No. 19-34054-sgj11.

**A. Documents that Defendants may use as exhibits:**

| <b>Dondero Exhibit No.</b> | <b>Description</b>   | <b>Offered</b> | <b>Objection</b> | <b>Admitted by Agreement</b> | <b>Admitted</b> |
|----------------------------|--|----------------|------------------|------------------------------|-----------------|
| 1.                         | Amended Complaint filed in Adv. No. 21-03003, including all exhibits attached thereto [Adv. Dkt. 79 and 79-1 through 79-6]   |                |                  |                              |                 |
| 2.                         | Amended Complaint filed in Adv. No. 21-03005, including all exhibits attached thereto [Adv. Dkt. 63 and 63-1 through 63-5]   |                |                  |                              |                 |
| 3.                         | Amended Complaint filed in Adv. No. 21-03006, including all exhibits attached thereto [Adv. Dkt. 68 and 68-1 through 68-9]   |                |                  |                              |                 |
| 4.                         | Amended Complaint filed in Adv. No. 21-03007, including all exhibits attached thereto [Adv. Dkt. 63 and 63-1 through 63-9]   |                |                  |                              |                 |
| 5.                         | Appendix in Support of Defendants' Motion to Compel Arbitration and Stay Litigation [Adv. Dkt. 81 in Adv. No. 21-03003] <sup>2</sup>                                     |                |                  |                              |                 |
| 6.                         | Declaration of Michael P. Aigen in Support of Motion to Compel Arbitration and Stay Litigation, dated September 1, 2021 [Exhibit A to Adv. Dkt. 81 in Adv. No. 21-03003] |                |                  |                              |                 |
| 7.                         | Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. [Exhibit 1 to Adv. Dkt. 81 in Adv. No. 21-03003]                       |                |                  |                              |                 |

<sup>2</sup> The appendix was attached to each Motion to Compel Arbitration that was filed in each of the above-captioned adversary proceedings. For the sake of brevity, only one appendix is included on this exhibit list. Defendants request that the Court take judicial notice of the identical filings made in each of the above-captioned adversary proceedings: Adv. 21-03003, 21-03005, 21-03006, and 21-03007.

|     |   |  |  |  |  |
|-----|---|--|--|--|--|
| 8.  | Excerpts from the Transcript of the Remote Deposition of James Dondero on May 28, 2021, Adversary Proceeding No. 21-3003 [Exhibit 2 to Adv. Dkt. 81 in Adv. No. 21-03003]   |  |  |  |  |
| 9.  | Acceptance of Appointment of Family Trustee, executed by Nancy Marie Dondero on October 13, 2015 [Exhibit 3 to Adv. Dkt. 81 in Adv. No. 21-03003]   |  |  |  |  |
| 10. | Trust Agreement Between Dana Scott Breault, Settlor and James D. Dondero and Commonwealth Trust Company, Trustees, The Dugaboy Investment Trust, dated November 15, 2010 [Exhibit 4 to Adv. Dkt. 81 in Adv. No. 21-03003] |  |  |  |  |
| 11. | Debtor's Unopposed Motion for Leave to Serve and File Amended Complaint, including all exhibits attached thereto [Adv. Dkt. 73 in Adv. No. 21-03003] <sup>3</sup>   |  |  |  |  |
| 12. | Order Granting Debtor's Unopposed Motion for Leave to Serve and File Amended Complaint [Adv. Dkt. 75 in Adv. No. 21-03003] <sup>4</sup>   |  |  |  |  |
| 13. | Stipulation and Agreed Order Governing Discovery and Other Pre-Trial Issues [Adv. Dkt. 78 in Adv. No. 21-3003] <sup>5</sup>   |  |  |  |  |

<sup>3</sup> See also Docket Numbers 55, 60, and 55 filed in Adv. Proc. Nos. 21-03005, 21-03006, and 21-03007, respectively. Defendants request that the Court take judicial notice of the filing of identical motions for leave to amend filed by Plaintiff in each adversary proceeding.

<sup>4</sup> See also Docket Numbers 57, 64, and 59 filed in Adv. Proc. Nos. 21-03005, 21-03006, and 21-03007, respectively. Defendants request that the Court take judicial notice of the filing of identical orders granting Plaintiff's motion for leave to amend in each adversary proceeding.

<sup>5</sup> See also Docket Numbers 62, 67, and 62 filed in Adv. Proc. Nos. 21-03005, 21-03006, and 21-03007, respectively. Defendants request that the Court take judicial notice of the filing of identical stipulations in each adversary proceeding.

|     |   |  |  |  |  |
|-----|---|--|--|--|--|
| 14. | Order Approving Stipulation and Agreed Order Governing Discovery and Other Pre-Trial Issues [Adv. Dkt. 86 in Adv. No. 21-3003] <sup>6</sup> |  |  |  |  |
|     | Any transcript of any hearing in the above-captioned bankruptcy case  |  |  |  |  |
|     | Any document or pleading filed in the above-captioned bankruptcy case   |  |  |  |  |
|     | Any transcript of any hearing in the above-captioned adversary proceedings  |  |  |  |  |
|     | Any document or pleading filed in the above-captioned adversary proceedings   |  |  |  |  |
|     | Any exhibit necessary for impeachment or rebuttal purposes  |  |  |  |  |
|     | Any and all documents identified or offered by any other party  |  |  |  |  |

Defendants reserve the right to amend and/or supplement this Exhibit List should they determine that any other document may be helpful to the trier of fact, whether in their case in chief or rebuttal.

**B. Witnesses that Defendants may call to testify:**

1. James Dondero;
2. Nancy Dondero;
3. James P. Seery, Jr.;
4. Any and all other witnesses identified or called by any other party; and

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<sup>6</sup> See also Docket Numbers 70, 75, and 70 filed in Adv. Proc. Nos. 21-03005, 21-03006, and 21-03007, respectively. Defendants request that the Court take judicial notice of the filing of identical orders approving the stipulations in each adversary proceeding.

5. Any witness necessary for rebuttal.

Defendants reserve the right to amend and/or supplement this Witness List should they determine that any other witness may be helpful to the trier of fact, whether in their case in chief or rebuttal.

Dated: November 5, 2021

Respectfully submitted,

/s/Deborah Deitsch-Perez

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**ATTORNEYS FOR THE DUGABOY INVESTMENT  
TRUST**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on November 5, 2021, a true and correct copy of the foregoing document, including all attached exhibits, was served via the Court's CM/ECF system on counsel for Plaintiff Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/Michael Aigen

Michael Aigen